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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/755,492	01/12/2004	William J. Deakin	25040-0951	1982
29952 7590 11/25/2008 SUTHERLAND ASBILL & BRENNAN LLP 999 PEACHTREE STREET, N.E. ATLANTA, GA 30309				
EXAMINER				
ZURITA, JAMES II				
ART UNIT		PAPER NUMBER		
3625				
MAIL DATE		DELIVERY MODE		
11/25/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/755,492

Applicant(s)

DEAKIN ET AL.

Examiner

JAMES ZURITA

Art Unit

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 July 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-70 is/are pending in the application.
- 4a) Of the above claim(s) 13-70 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 07/03/2008 has been entered.

Response to Amendment

On 3 July 2008, applicant amended claims 1 and 11.

Claims 1-70 are pending. Claims 13-70 are withdrawn from consideration.

Claims 1-12 are examined.

Response to Arguments

Applicant's arguments filed 3 July 2008 have been fully considered but they are not persuasive.

Applicant argues:

The cited references ... neither disclose or suggest the amended element, "at least one sensor operable to detect the consumer's presence in proximity to the product container, wherein the at least one display is operable to output customized marketing content based at least in part on the consumer's presence"...

...Walker appears to relate to sensing a physical presence for the purpose of basing a price change in a product to be dispensed. See Paragraph [0065]. Walker does not teach or suggest output of customized marketing content based at least in part on a consumer's presence.

In response, the Examiner directs applicant's attention to Walker, at least paragraphs 0176 and 0189, which show that the product device may display (e.g., on video display) discounted prices and may also display marketing content that is customized, including price substitutes and that coupons may be redeemed for any product in the device.

Applicant admits that Walker discloses sensors to detect a consumer's presence:

...Walker appears to relate to sensing a physical presence for the purpose of basing a price change in a product to be dispensed....

Yet, Applicant argues:

...whereas the Applicants' claimed invention relates to an interactive networked product container. See Abstract. As explained in the Applicants' Background, conventional product containers generally have no mechanisms to capture and hold a consumer's attention for any length of time other than a fixed brand or product displays presented by the product container. See Paragraph [0003]. Such product containers provide no added benefits or features other than to provide consumers with access to products, Id.

The Examiner notes that there is no mention of ...capturing... holdf...length of time... in the claims.

Claim Objections

Claim 11 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

Claims 5-7 and 10 refer to the container and is interpreted to refer to product container of parent claims for proper antecedent basis.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 11 contain the conditional term OR, which renders the claims indefinite, since it is not possible to determine the scope of the claim as requiring both items or only one of the items separated by the or. For purposes of this examination, examiner will give the term its broadest reasonable interpretation and consider that the particular condition is satisfied if one of the limitations is met.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-12, as interpreted, are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker (20050060062).

As per claim 1, Walker discloses a product container (Fig. 1):

at least one display comprising selectable items for a consumer to identify via the display a physically tangible product for purchase (e.g., Walker, Fig. 2, item 124);

at least one sensor operable to detect the consumer's presence in proximity to the product container (Walker, Fig. 2, sensor 115, for example),

outputting customized marketing content based at least in part on the consumer's presence (Walker, at least paragraph 0065, paragraphs 0176 and 0187-190, customized marketing content such as coupons).

a network interface, wherein said network interface facilitates communication of the product container with a network (Walker, Fig. 9, network, inherently requires a network interface);

a wireless access point which provides wireless communication via the network for at least one device associated with the consumer, (Walker, paragraph 0058, for example)

wherein the wireless access point requests either validation of the consumer or payment information (Walker, see at least paragraph 0070, for example)

when the at least one device is determined to be within a vicinity of the wireless access point (Walker, paragraph 0065, proximity to the sensor)

wherein the product container is operable to dispense the product selected by the consumer. (Walker, see for example, at least paragraph 0078);

Walker does not specifically disclose that the at least one display is operable to output the coupons based at least in part on the consumer's presence. Walker a video display to indicate via text and graphics that coupons may be redeemed for any product in the product container.

It would have been obvious to extend Walker to disclose that the at least one display is operable to output customized marketing content such as coupons based at least in part on the consumer's presence because the incorporation of such features is no more than the predictable use of prior art elements according to their established function.

As per claim 2, Walker discloses that the network is the Internet. Walker, paragraph 0040, for example.

As per claim 3, Walker discloses that the product comprises consumer packaged goods. Walker, Fig. 1, item 136 chips, for example.

As per claim 4, Walker discloses that the product comprises soft drinks. Walker, Fig. 1, COLA, water, for example

As per claim 5, Walker discloses that the product container is operable to communicate with a content server via the network interface. Walker, Fig. 2, to network

As per claim 6, Walker discloses that the product container is operable to receive information from the consumer (Walker, Fig. 2, input device 110, for example) wherein the product container is further operable to upload the information received from the consumer to the content server (to network, as in Fig. 2 and related text).

As per claim 7, Walker discloses an output device, wherein said output device is operable to display content transmitted to said container from said content server. See Walker, at least references to displaying discount, as in paragraph 0176, for example.

As per claim 8, Walker discloses an output device, wherein said output device is operable to print receipts. Walker, at least paragraph 0062 and other references to printer.

As per claim 9, Walker discloses that the output device is operable to print receipts comprising a reward indicator. See, for example, Walker, paragraph 0088, for example, benefit providing means

As per claim 10, Walker discloses that the product container is selected from the group of containers consisting of a fountain machine and a vending machine. See, for example, Walker, Fig. 1 and related text.

Claim 11 is rejected on the same grounds as claim 1.

As per claim 12, Walker discloses that the sensor is selected from the group of sensors consisting of a motion sensor, a microphone, a light sensor, and a radio-frequency sensor. See, for example, at least Walker, paragraph 0065.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES ZURITA whose telephone number is (571)272-6766. The examiner can normally be reached on 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith can be reached on (571)272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/James Zurita/
Primary Examiner
Art Unit 3625
22 November 2008